Senate Committee on Environment and Public Works
Hearing Entitled, *"Implementing IIJA: Perspectives on The Drinking Water and Wastewater Infrastructure Act."*
March 15, 2023
Questions for the Record for Radhika Fox

Chairman Carper:

1. The Bipartisan Infrastructure Law provided $23.4 billion in supplemental funds to the Clean Water State Revolving Loan Fund and the Drinking Water State Revolving Loan Fund, which states will use to fund water infrastructure projects across the country. This was in addition to the baseline funding that states receive each year through the annual appropriations process.

    a. Now that we are a year into the implementation of the Bipartisan Infrastructure Law, what are some of the barriers EPA is seeing for municipalities and other stakeholders trying to address these critical infrastructure improvements for water and wastewater?

    EPA Response: Many small and under-resourced communities across the country lack the technical, managerial, and financial capacity to apply for and successfully manage funding for water infrastructure improvements. In some cases, municipalities have difficulty finding consultants or contractors to support the development of applications, projects, and long-term planning (including the development of Capital Improvement Plans). Still other communities are simply unaware that funding is available. In some communities, whether it's aging infrastructure, concern about lead pipes, or the potential for PFAS contamination, they simply don't know where to begin to access these resources.

    Thanks to funding from the BIL, EPA is providing unprecedented outreach and levels of technical assistance (TA) support to help communities be aware of, prepare for, apply for, and receive SRF funding. Assistance is targeted to specific community needs. In some cases, it may include improving system management, financial management, project development support, planning and assessment, and even engineering services. The Environmental Finance Centers (EFCs) along with pilot programs, including the LSLR Accelerators Initiative, H2O Community Solutions Team pilot program, and Closing America's Wastewater Access Gap Initiative, will help deliver the services critical to helping underserved communities—which have historically struggled to access federal funding—receive the support they need to access resources for water infrastructure improvements. Additionally, Congress mandated that nearly half of BIL SRF resources go to disadvantaged communities as grants or forgivable loans, and both the Clean Water and Drinking Water SRFs are covered programs under President Biden's Justice40 Initiative. EPA's technical assistance efforts are an essential element of ensuring that we meet those goals. To learn more about EPA's efforts in implementing the Justice40 Initiative, please reference https://www.epa.gov/environmentaljustice/justice40-epa.

2. One of the Biden Administration's big priorities has been the replacement of lead service lines, and the Bipartisan Infrastructure Law included $15 billion in funding for full lead service line replacements. However, in the years leading up to the passage of that law, we heard from several states, Delaware included, that they did not consider the prevalence of lead service lines a significant problem. However, as some of those states started doing lead inventories, it became clear that presence of lead pipes, and the health impacts they cause, is more pervasive than expected.

    a. Given this initial skepticism, how has the reception been from States receiving funding for lead service lines replacements?

    EPA Response: To date, EPA has issued lead service line replacement (LSLR) capitalization grants to 24 states, totaling more than $1.25 billion. These funds may be used for LSLR as well as associated activities such as inventories. Following the FY22 distribution of BIL Drinking Water State Revolving Fund (DWSRF) LSLR funds, some states raised concerns about not receiving enough funding to support lead line replacement, while others felt they received more than they needed. As systems develop their inventories of lead service lines, however, they are gaining a more accurate understanding of their funding needs. The 7th Drinking Water Infrastructure Needs Survey and Assessment (DWINSA) for the first time included questions focused on service line material. Based on the results, EPA is projecting a national total of 9.2 million lead service lines across the country. The 7th DWINSA delivers the best available national and state-level projections of service line counts and advances a unique opportunity to employ a separate lead service line allotment formula for the BIL DWSRF LSLR appropriation. This new LSL-specific formula will allow states to receive financial assistance commensurate with their need as soon as possible.

    b. If states are truly unable to spend all of their allocation on lead service line replacements, is EPA beginning preparations to reallocate lead focused SRF dollars to states with greater unmet need?

    EPA Response: Under Section 1452(a) of the Safe Drinking Water Act, states have two federal fiscal years to apply for and receive DWSRF funds that Congress appropriates. In their application states must demonstrate funding needs via an Intended Use Plan and a Project Priority List. The Fiscal Year 2022 funds will be available for states to apply for and receive from EPA until September 30, 2023. After those two federal fiscal years, EPA will follow the standard reallotment procedure outlined in Section 1452(a) of the Safe Drinking Water Act and EPA's September 11, 2020, memo, *State Revolving Fund Capitalization Grant Reallotment Procedure*. Under this reallotment process, EPA expects that over time more lead service line funds will flow to states with more lead service line projects. Each year of BIL DWSRF lead service line funding through fiscal year 2026 will have the same reallotment process. EPA is actively informing states of the reallotment process to ensure that state agencies do not jeopardize

their opportunity to receive DWSRF funds dedicated for LSLR and associated activities such as inventories.

3. In 2016, the Guardian newspaper found that, over the past decade, water departments in at least 33 large cities have chosen to test their water with methods that underestimate the lead levels in drinking water. The reason for this, the article opines, is that many communities are not in compliance with drinking water regulations and are fearful that more accurate testing for lead levels may open up the utility to liability actions under existing law. We heard feedback from utilities following the passage of America's Water Infrastructure Act in 2018 that confirmed this limited testing was taking place, which is why we made significant changes to EPA lead remediation program in the Drinking Water and Wastewater Infrastructure Act.

    a. Have recent legislative changes been successful in getting communities to come forward and acknowledge the full scope of their lead problems without fear of legal action, and what more can we be doing to make sure the lead problem gets addressed while protecting utilities that are trying to do the right thing?

    EPA Response: The combination of current regulatory requirements, such as the October 16, 2024, deadline for initial service line inventories, and dedicated DWSRF LSLR funding through the Bipartisan Infrastructure Law will accelerate the replacement of lead service lines, the primary source of lead in drinking water. Efforts to address lead in drinking water are further supported by grant programs funded by Congress through annual appropriations, such as the Voluntary Schools and Child Care Lead Testing and Reduction Grant program, which DWWIA amended to allow grant funding for lead remediation in addition to testing.

4. The principles outlined in EPA's PFAS Roadmap include working upstream of PFAS contamination challenges and holding polluters accountable for PFAS contamination. I applaud EPA's progress in proposing Maximum Contaminant Levels (MCLs) for six PFAS, including perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorononanoic acid (PFNA), hexafluoropropylene oxide dimer acid (HFPO-DA, commonly known as GenX Chemicals), perfluorohexane sulfonic acid (PFHxS), and perfluorobutane sulfonic acid (PFBS). That said, I have heard concerns that public drinking water utilities will bear the cost of installing and operating PFAS removal technologies to ensure the safety of our drinking water.

    a. What current or planned actions is EPA pursuing to shift the burden of PFAS removal and remediation back to the polluters responsible for contamination?

    EPA Response: EPA is focused on making sure that upstream polluters shoulder the burden of cleaning up PFAS contamination. While water utilities will be required to meet EPA's new drinking water standards, EPA committed in its PFAS Strategic Roadmap to hold polluters and other responsible parties accountable. On January 12, 2023, the Federal Register published a proposal for public comment from EPA's Office of Enforcement and Compliance Assurance (OECA) for a new National Enforcement and Compliance Initiative (NECI) for

PFAS. OECA proposed that the NECI would focus initially on identifying the extent of PFAS exposures that pose a threat to human health and the environment and pursuing responsible parties for those exposures. EPA intends to focus enforcement efforts on PFAS manufacturers and other industrial entities whose actions result in the release of significant amounts of PFAS into the environment, and on federal facilities that may be a significant source of PFAS contamination. OECA's proposal explains that to the extent that PFAS cleanup efforts occur under CERCLA, EPA will develop a CERCLA enforcement discretion and contribution protection settlement policy regarding PFAS contamination. OECA explained that EPA would not intend to pursue entities where equitable factors do not support assigning CERCLA liability. Rather, OECA provided as examples that it would intend to focus enforcement efforts on entities like PFAS manufacturers whose actions result in the release of significant amount of PFAS into the environment, or on federal facilities that may be a significant source of PFAS contamination.

b. When does EPA expect to create water quality criteria for all six PFAS that are included in the recent drinking water regulations?

EPA Response: EPA is moving forward with developing national recommended water quality criteria for PFAS, as supported by available data. EPA is gathering toxicity and exposure information necessary to develop *human health* criteria for the six PFAS included in the proposed national primary drinking water regulation. EPA's latest PFOA and PFOS toxicity assessments are undergoing public comment as part of the proposed national primary drinking water regulation. Following closure of the public comment period (May 30, 2023), the agency will consider the comments and revise the human health toxicity assessments as appropriate. EPA expects to issue updated human health toxicity assessments for PFOA and PFOS in 2023. These final assessments will be leveraged to develop national recommended human health criteria, which EPA expects to finalize by the fall of 2024 as described in EPA's PFAS Strategic Roadmap. EPA continues to gather information to develop human health criteria for additional PFAS, including GenX chemicals, PFBS, PFNA, and PFHxS.

EPA expects to soon finalize national recommended *aquatic life* criteria for PFOA and PFOS, which are protective of most species in an aquatic ecosystem and can be adopted by states and tribes to protect aquatic life designated uses.

5. Last December, EPA issued guidance for state agencies with delegated authority to implement the National Pollutant Discharge Elimination System (NPDES) permit program. This guidance recommended state permit writers to include monitoring requirements for discharges of PFAS.

a. How does EPA plan to help states properly implement this guidance, particularly with regard to permits issued in states with delegated authority?

EPA Response: EPA is working closely with its state partners to implement this guidance and restrict PFAS discharges. To date, EPA has hosted or served as a

panelist at five EPA/State meetings to discuss the new guidance. EPA hosted a permit writers training event in March 2023, where it showcased how regions and states are implementing the policy in the field. The next permit writer training event is scheduled for the summer of 2023. In addition, EPA is providing technical assistance to permit writers as complex, technical issues arise.

b. How does EPA plan to ensure that facilities are not discharging PFAS in violation of the Clean Water Act?

EPA Response: The guidance provides a monitoring and reporting framework that permitting authorities can use not only to implement the recommendations but also outlines the statutory and regulatory provisions the Agency believes are appropriate for addressing and reducing PFAS discharges from permitted facilities.

c. How will the finalization of the proposed MCLs for six PFAS affect NPDES permits for facilities that discharge into water upstream of a drinking water intake?

EPA Response: A maximum contaminant level (MCL) is the maximum level allowed of a contaminant in water which is delivered to any user of a public water system. NPDES permits contain limits on pollutants a facility can discharge to ensure the applicable state water quality standards are protected and that any effluent limitation guidelines EPA has set for industrial point source discharges are met. The new guidance issued by EPA in December 2022 recommends that EPA and states that administer the NPDES program provide notification to potentially affected downstream public water systems of draft permits with PFAS-specific requirements, monitoring, best management practices, or other conditions. In addition, the Office of Water's Effluent Guidelines Program Plan 15, released in January of 2023, announced EPA's intent to initiate a Publicly Owned Treatment Works (POTW) Influent Study of PFAS, which will focus on collecting nationwide data on industrial discharges of PFAS to POTWs, including categories recently reviewed in its Effluent Guidelines Program. EPA intends to undertake this study to verify industrial sources of PFAS in wastewater and help regulatory agencies and POTWs assess the need for control measures at those sources.

d. Would EPA require the modification of NPDES permits to help protect downstream drinking water quality?

EPA Response: NPDES-approved states have the authority and discretion to modify permits if that would be appropriate under the Act and its implementing regulations.

6. EPA's Fiscal Year 2024 budget proposal includes $170 million to support the Agency's PFAS Strategic Roadmap, which lays out a whole-of-agency approach to addressing PFAS. The roadmap sets timelines by which EPA plans to take specific actions and commits to pursuing new policies to safeguard public health, and hold polluters accountable. One of EPA's stated objectives within the PFAS Roadmap is to accelerate the deployment of destruction and disposal technologies for PFAS. More specifically, the PFAS Roadmap states that EPA will update its destruction and disposal guidance to meet its statutory deadline of December 2023.

a. Please provide an update on EPA's efforts to update this guidance

EPA Response: EPA is taking significant steps toward updating our research and guidance on PFAS destruction and disposal. In EPA's 2020 interim guidance, EPA highlighted significant uncertainties about the potential for the migration of PFAS to the environment associated with some PFAS destruction and disposal technologies. Our scientists are working to improve our scientific understanding of PFAS destruction and disposal technologies, and we plan to update the 2020 guidance to reflect both public comments and more recent published research results. As you note, we have a deadline to update our December 2020 guidance by December 2023.

7. Under the PFAS Roadmap, EPA has stated that working to accelerate the deployment of destruction and disposal technologies for PFAS is one of the Agency's priorities. In addition, EPA has found that incineration of PFAS poses risks to surrounding communities. Further, Congress has imposed a moratorium on the Department of Defense's incineration of many types of PFAS waste.

    a. What is EPA doing to promote the development and use of safe PFAS destruction technologies?

EPA Response: As part of EPA's PFAS Strategic Roadmap, the Agency is evaluating and developing technologies for reducing PFAS in the environment. This work includes research on drinking water and wastewater treatment, contaminated site remediation, air emission controls, and destruction and disposal of PFAS-containing materials and waste streams.

In addition to conducting research on PFAS destruction and disposal, EPA has supported the development of PFAS destruction technologies through the Agency's Small Business Innovation Research Program and the 2020 Innovative Ways to Destroy PFAS Challenge.

As noted above, EPA also continues to evaluate data on the effectiveness of certain destruction technologies and expects to issue an update to the Guidance on PFAS Destruction and Disposal by December 2023.

Senator Fetterman:

1. I want to raise a serious concern facing constituents in York County, Pennsylvania. This is a rural, low-income area that relies on wells for drinking water. There is a waste and recycling center in the county that is known to be polluting the Susquehanna River and a tributary, Kreutz Creek, with its effluent. Their wastewater treatment plant has been the subject of a state consent decree, and the landfill's operator has stated that it is roughly two-thirds of the way through a project to address wastewater treatment on the site.

   Spurred by these known violations, the local riverkeeper tested Kreutz Creek for PFAS. He found levels that were exponentially higher than standards set by EPA, and a nationwide survey found that the creek has the highest concentration of PFAS in the country. Residents, justifiably concerned about pollution in their only source of drinking water, asked for testing of their wells. Every well tested higher for PFAS than state "potable water" standards, with one well exceeding the acceptable concentration by more than 100 times.

   The landfill operators won't acknowledge responsibility for the pollution of this groundwater, despite their known environmental violations and the proven connection between landfills and groundwater PFAS contamination. In the meantime, residents are buying their own bottled water out of pocket and bathing their children in water they know tested too high for dangerous chemicals.

   The Lower Susquehanna Riverkeeping Association has filed suit against the waste and recycling center, claiming that they have violated and continue to violate the Clean Water Act by dumping PFAS into the creek without National Pollutant Discharge Elimination System permits. However, this would not resolve concerns regarding PFAS in private wells.

   Is EPA aware of this issue?

   a. Have you communicated with the Pennsylvania Department of Environmental Protection?

      EPA Response: Yes, EPA continues to coordinate with PADEP on this situation. Through a Consent Order Agreement (COA) with PADEP, Modern Landfill has been upgrading its treatment works, with improvements expected to be completed in May 2023. The upgrades will include a new reverse osmosis treatment system—a known treatment technology for PFAS—which will likely reduce any PFAS contamination in Modern Landfill's discharges to Kreutz Creek. PADEP also intends to require PFAS monitoring in a reissued National Pollutant Discharge Elimination System (NPDES) permit for Modern Landfill. This spring, PADEP will sample Kreutz Creek for PFAS, including by taking surface water samples, passive samples, and fish tissue samples. Results of the sampling will be used to assess whether the waterbody should be included on Pennsylvania's 303(d) list of impaired waters that require Total Maximum Daily Loads (TMDLs). If Kreutz Creek is included on the state's 303(d) list, the state is required to develop a TMDL, which is a technical plan that identifies the maximum amount of a pollutant (e.g., PFAS) that a waterbody can receive and

still meet applicable water quality standards. A TMDL is the sum of wasteload allocations for point sources, load allocations for nonpoint sources, and a margin of safety. Wasteload allocations in the TMDL, including any wasteload allocation for the landfill, would then be implemented through a National Pollution Discharge Elimination (NPDES) permit. EPA will continue to coordinate with PADEP throughout these steps.

b. What assistance or guidance can EPA provide for well-owners, particularly regarding testing and filtration?

EPA Response: While the Safe Drinking Water Act does not regulate wells that serve drinking water to fewer than 25 persons, EPA understands that people who consume water from these unregulated wells may be concerned about contamination of their drinking water by PFAS or other contaminants. EPA has resources to help people who rely on unregulated wells for their drinking water. First, EPA has information on protecting unregulated wells to prevent contamination, testing unregulated wells, and protecting your health at https://www.epa.gov/privatewells. (The Centers for Disease Control and Prevention also provides similar information about unregulated water systems at https://www.cdc.gov/healthywater/drinking/private/index.html)

Second, if test results from an approved laboratory show levels of PFOA, PFOS, Gen X, or PFBS, EPA's PFAS health advisories Questions and Answers provide information on actions that well owners could consider based on test results.

Third, State Drinking Water State Revolving Loan Fund (DWSRF) programs may provide funding to drinking water systems to connect households served by unregulated wells to their system or to form a new drinking water system that would be subject to Safe Drinking Water Act requirements. SRF funds can be used by states to provide household water quality testing for these PFAS where there is an intent to connect with a public water system, or to form a new one, and to provide temporary household or point-of-use filters while a connection to a public water system is established. For more information on these funding programs, please visit www.epa.gov/infrastructure. Funding for these activities is also available to public water systems through states and territories under the Emerging Contaminants in Small or Disadvantaged Communities Grant program.

c. What assistance can EPA provide to the state or to residents if a responsible party is not identified?

EPA Response: As noted above, Modern Landfill has been upgrading its treatment works, with improvements expected to be completed in May 2023. EPA will continue to assist PADEP as needed.

Ranking Member Capito:

1. How much of the first year's funding allotment for the SRFs has been deployed in small and rural communities?

   EPA Response: EPA is currently updating the SRF Data System so that it can collect specific information regarding BIL activity. EPA should start collecting BIL-specific data in July 2023. EPA expects to be able to report on BIL-specific activity in late FY 2024. Thereafter, EPA will be able to report out on BIL progress on a quarterly basis.

2. The Bipartisan Infrastructure Law allows states to use an additional 2 percent of their DWSRF and CWSRF grant allocations for technical assistance for small and rural communities. Can you describe how the EPA is implementing this provision?

   EPA Response: The Bipartisan Infrastructure Law amended the Clean Water Act to add a new section 603(k). Per Section 603(k), EPA is providing states with maximum flexibility to utilize up to an amount equal to 2% of their annual CWSRF capitalization grant for technical assistance to small and rural communities. If a state does not utilize the full amount of the technical assistance funds allowed under a capitalization grant, they may reserve the unused portion for later use. This gives states the flexibility to determine how best to allocate resources between project funding and technical assistance each year.

   EPA's March 2022 Bipartisan Infrastructure Law SRF Implementation Memorandum encourages states to fully utilize this set-aside to assist small and rural publicly owned treatment works. To support states in doing so, EPA incorporated modules on technical assistance and outreach to disadvantaged communities into training workshops. EPA will share examples and best practices of how states utilizing these funds as more information becomes available through the SRF annual oversight process.

   Beyond this set-aside, EPA is funding a historic Technical Assistance program, with dedicated efforts to support small and rural communities. This includes Environmental Finance Centers (EFCs) selected to help communities in each EPA region, as well as for the first-time national EFCs, including the Rural Community Assistance Program.

   a. How is this funding being used to help these communities with federal compliance, operations and maintenance, and public health protection?

      EPA Response: The EPA memorandum, *Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law*, provides several examples of technical assistance activities eligible for these funds, including, but not limited to, retaining circuit riders to provide technical assistance; contracting with technical assistance providers; contracting with engineering firms directly to help develop projects; retaining certified public accountants or financial institutions to help recipients complete the financial portions of SRF application packages; and retaining entities to complete Davis-Bacon related acts and/or American Iron and Steel/Build America Buy America compliance for recipients.

Initial discussions with state CWSRF programs indicate that several states are utilizing or planning to utilize these funds. For example, the Oregon CWSRF intends to utilize these funds to develop an in-state technical assistance program. Oregon currently has a request for proposal to solicit potential TA providers from across the state with a variety of expertise to assist rural, small, and tribal publicly owned treatment works. The Hawaii CWSRF program has used the 2% technical assistance funds to hire a contractor to assist Hawaii County with the development of a capital improvement program.

3. In the 2020 ELG rule, the EPA determined that membrane filtration was inappropriate to be mandated as a "Best Available Technology" due to significant information gaps and unacceptable negative impacts.

   Your proposed ELG rule requires membrane filtration technology for certain wastewater streams based primarily on foreign installations of membrane filtration systems. In the 2020 rule, the EPA noted that it had limited details on these foreign systems. Can you provide the Committee with all documents and other new information that the EPA used to make this decision?

   EPA Response: Yes, please see the following documentation contained within the docket for the March 2023 Proposed Steam Electric Rule.

Document Control Number (DCN)	Document Title	Steam Electric ELG Docket Link
SE08623	China Huadian Jiangsu Power Jurong Power Plant FGD Wastewater Zero Liquid Discharge Project was Awarded the Engineering Star Award (Nanostone)	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-8546
SE07107	Vendor FGD Wastewater Treatment Details—Doosan	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-7602
SE08622	Flue Gas Desulfurization Treatment (Lenntech)	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-8545
SE10281	Technologies for the Treatment of Flue Gas Desulfurization Wastewater, Coal Combustion Residual Leachate, and Pond Dewatering	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-9656
SE06915	Final Oasys Meeting Notes	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-7334
SE08618	Final DuPont Meeting Notes	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-8887

SE10245	Notes from Vendor Call with DuPont October 29 and December 8, 2021	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-9378
SE10290	Notes from Vendor Call with New Logic on October 1, 2021	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-9380
SE10378	Notes from Vendor Call with ProChem, Inc. on October 12, 2021	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-9671
SE10398	FGD Wastewater Treatment Testing Using a Saltworks Flex EDR Selective Electrodialysis Reversal	https://www.regulations.gov/document/EPA-HQ-OW-2009-0819-9674 (publicly available at https://www.epri.com/research/programs/073222/results/3002020092)

4. Is the EPA working on any guidance related to the Supreme Court's *County of Maui* decision?

   EPA Response: Yes, EPA is working on a guidance related to the Supreme Court's *County of Maui* decision and expects to publish the guidance by the end of the calendar year 2023.

   a. If yes, does the guidance have any implications for the ELG rule?

      EPA Response: The recent NPRM for the Steam Electric Power Generating Point Source Category includes preamble discussion about the *County of Maui* decision. It describes information that could help a permit writer conduct an analysis to determine whether discharges to groundwater constitute the functional equivalent of a direct discharge. For the final rulemaking, EPA anticipates aligning any provisions or recommendations with any future guidance on implementing the *Maui* decision.

5. The Outer Continental Shelf General Permit for Region 6 expired on September 30, 2022. This permit covers all discharges for oil and gas operations for the region, which includes nearly all oil and natural gas production in the Gulf of Mexico. Can you provide me the status of the Region 6 NPDES General Permit, and an estimate of when the EPA plans to issue the new Region 6 General Permit?

   EPA Response: The Region 6 GMG290000 Oil and Gas General Permit covers federal waters in the Western and most of the Central Gulf of Mexico off Louisiana and Texas. The existing permit expired September 30, 2022 and is now in the final stages of reissuance. Permittees who filed a timely and complete notice of intent to be covered continue to be covered until EPA acts on the next permit issuance. EPA reached out to the offshore oil and gas industry to recommend obtaining coverage for new discharges prior to expiration of the permit.

Senator Cramer:

1. The Infrastructure Investment and Jobs Act, known as the Bipartisan Infrastructure Law (BIL) provides $15 billion in funding to be disbursed to states through the Drinking Water State Revolving Fund (DWSRF) for lead service line replacement. The City of Bismarck has been using the North Dakota DWSRF program to complete $1.5 million worth of full and partial lead service line replacements before the enactment of the BIL. The replacements are done in conjunction with their annual water main replacement projects. The city replaces lead service lines to the curb stop and provides filters to residents until follow-up testing shows lead levels below the action level. The city also offers residents the option to replace their portion of the service line. They have completed about 120 full lead service line replacements and about 80 partial lead service line replacements. However, the Environmental Protection Agency (EPA) is no longer allowing the DWSRF program to fund any partial lead service line replacements with BIL dollars. Because of this, the City of Bismarck has opted not to use the DWSRF program and will continue replacing their portion of the lead service line to the curb stop. As a result, residents in a disadvantaged portion of the city will not be able to take advantage of the additional subsidization offered by the BIL funding designated for residents to replace their portion of the pipes.

    a. Do you have concerns about cities opting not to use the DWSRF program so they can continue their practice of partial lead service line replacements?

       EPA Response: EPA encourages all water systems to conduct full replacements to remove all sources of lead from the distribution system. Replacing only part of a lead service line is frequently associated with increased lead levels in drinking water in the short term and is not as effective long-term at decreasing the risk of harmful lead exposure from lead pipes. Partial replacements can also be a source of confusion for residents, who may think a partial replacement is all that is required to remove lead from their drinking water. The science is clear: there is no safe level of exposure to lead, especially for children. That means we need to get every inch of lead pipe out of the ground to protect the millions of people who still fear the water that comes out of their tap – or wonder if they should. To that end, we released additional Guidance on Developing Lead Service Line Inventories in August 2022, and we are working to harmonize our infrastructure investments with our regulatory work, like the Lead and Copper Rule Improvements.

    b. Are you concerned that the full-service line replacement requirement will actually impair incremental progress in replacing lead service lines?

       EPA Response: Both President Biden's goal and Congress' goal is to get the lead out. All of it. The requirement to do full replacements is protective of human health. EPA encourages water systems to explore all of their options before resorting to partial replacements. Partial replacements are allowed – and able to be funded under this program – where a portion of a service line has already been replaced.

c. Since the passage of BIL, has every lead service line replacement project out of the $15 billion DWSRF funding been a full lead service line replacement?

EPA Response: Per the terms and conditions of the SRF capitalization grants, SRF funds may only be used for full lead service line replacement.

d. What flexibility is there for project applicants so we are not turning away incremental progress?

EPA Response: EPA was clear in the March 2022 memorandum, "Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law," that BIL funds must only be used to conduct full lead service line replacements. This requirement helps address a long-standing equity challenge – for some Americans, the cost to replace their portion of LSLs is prohibitively high. Americans unable to replace their portion of the LSL remain disproportionately exposed to lead and its harmful impacts.

Senator Lummis:

1. Administrator Fox, in my home state of Wyoming and across the West, water supply is an absolutely critical issue. There is at least one estimate that approximately 2.1 trillion gallons of drinking water is lost in municipal water systems every year as a result of faulty and leaky infrastructure – water that could be supplying American agriculture, driving American manufacturing, and providing for American families. With EPA poised to be spending massive amounts of taxpayer dollars on water infrastructure under IIJA, what is the EPA doing to address water loss from leaking pipes and struggling water systems?

   Specifically, has the EPA examined new technologies for both leak detection and leak containment to make water pipes more durable and lasting?

   EPA Response: EPA recognizes the economic and public health implications of significant water loss in distribution systems. Water loss control will save water systems money by reducing the amount of treatment, will support water conservation efforts, and will protect public health through the reduction of potential points of entry for pathogens. BIL funding can support water systems in replacing transmission mains, as well as lead service lines. The Agency's Water Efficiency and Conservation Resources for Small Drinking Water Systems webpage links to documents to help water systems identify and mitigate water loss. These documents include "Control and Mitigation of Drinking Water Losses in Distribution Systems" and "Water Audits and Water Loss Control for Public Water Systems." EPA also discusses water loss management in its "Reference Guide for Asset Management Tools."

Senator Mullin:

1. As a part of the Environmental Protection Agency's (EPA) settlement with the Water Keeper's Alliance, EPA is required to publish a revised chromium (Cr) (VI) standard within three years of completing the toxicity assessment. What is the status and timeline for completing the toxicity studies of Cr(VI)?

   EPA Response: EPA is currently working on an Integrated Risk Information System (IRIS) assessment of chromium IV. The assessment is currently in Step 4 of the IRIS Process, which is public comment and external peer review. The external public peer review meeting occurred on March 29-31, 2023. The IRIS Program will update its anticipated timeframe for completing the assessment after receiving the final peer review report later this year from EPA's Science Advisory Board (SAB). For more information on the chromium IV assessment, please see https://cfpub.epa.gov/ncea/iris_drafts/recordisplay.cfm?deid=355226#.

   a. What is EPA's plan to revise the chromium regulation?

      EPA Response: The EPA drinking water standard for total chromium is 100 parts per billion (ppb). This standard includes all forms of chromium, including hexavalent chromium. EPA is currently developing an Integrated Risk Information System (IRIS) assessment for hexavalent chromium, which is currently in Step 4 of the IRIS Process (public comment and external peer review). In accordance with the Waterkeepers Alliance, Inc. et al v. U.S. et al, EPA Settlement Agreement, filed June 1, 2020 (19 Civ. 899 (LJL)), no later than three years after the completion of the EPA's final IRIS assessment for Hexavalent Chromium, the EPA will make a determination as to whether the existing standard for chromium is appropriate for revision based on the final IRIS assessment. Please note that under the 2020 settlement agreement, EPA is not "required to publish a revised chromium (Cr) (IV) standard," but rather to make the determination described above. For further information about EPA's protocol for reviewing existing drinking water standards and determining whether they are candidates for potential revision, see https://www.epa.gov/dwsixyearreview.

2. In regards to the Modified Disinfection ByProduct (MDBP) Rule, that is expected to be finalized by September 2028, what considerations has EPA made to take into account cost compliance for public water systems?

   EPA Response: EPA is developing revisions to the Microbial and Disinfection Byproduct (MDBP) rules consistent with the timeframes specified under the Waterkeepers Alliance, Inc. et al v. U.S. et al, EPA Settlement Agreement, filed June 1, 2020 (19 Civ. 899 (LJL)). EPA is currently seeking recommendations from the National Drinking Water Advisory Council (NDWAC), a statutorily chartered Federal advisory committee, on key issues related to potential revisions to MDBP rules. EPA will conduct a health risk reduction and cost analysis in accordance with the Safe Drinking Water Act, which will include analysis of costs associated with rule

compliance as well as the health risk reduction benefits to water system consumers to inform the development of the proposed rule revisions.

3. While funding is still being made available from the BIL for lead and copper issues across the country, including $15 billion for the national lead service line replacement effort, the EPA is adding new health advisories for several contaminants that would require extensive upgrades to our nation's infrastructure. Will individual Americans that may have lead and copper lines privately owned be able to apply for these loans or would a public utility need to be a pass-through?

   EPA Response: The public water system would need to apply for DWSRF funding for this purpose. Full lead service line replacement (both public and private portions) is eligible for DWSRF funding.

   a. What percentage of our national need is covered under this program?

      EPA Response: The $15 billion BIL DWSRF appropriation dedicated to LSLR is the greatest amount of dedicated funds for LSLR and, combined with other sources of funding, will play a significant role in the effort to remove 100% of LSLs across the country. EPA is in the process of updating its total cost estimates of 100% LSL replacement based on the information the Agency received through the 7th Drinking Water Infrastructure Needs Survey Assessment (DWINSA).

   b. Are we tracking current needs in the funded areas of this program to be able to track our progress and success in utilizing this funding?

      EPA Response: EPA is committed to tracking the use of BIL funds and reporting success in communities taking advantage of this unprecedented assistance to improve their water infrastructure, their health, and economies. EPA is currently updating the SRF Data System so that it can collect specific information regarding BIL activity. EPA should start collecting BIL-specific data in July 2023 and expects to be able to report on BIL-specific activity in late FY 2024. Thereafter, EPA will be able to report out on BIL progress on a quarterly basis.

Senator Sullivan:

1. EPA's budget justification highlights that in FY24, your agency plans to prioritize working with states that are seeking to set up their own Class VI underground injection control (UIC) program – also known as seeking primacy from EPA – for the underground storage of carbon dioxide (CO2).

   This is a priority for the State of Alaska. The Governor's Office recently submitted a bill to the State Legislature that would instruct the Alaska Oil and Gas Conservation Commission (AOGCC) to seek primacy and set up its own UIC program; this would be in addition to the primacy that AOGCC already has for Class 2 for oil and gas wells. But I have significant concerns about the speed at which EPA is making decisions on applications from states seeking primacy. Louisiana, for example, submitted its

application in April 2021 and has yet to receive a decision. And despite recent reports that a decision on Louisiana's application is imminent, I am concerned that this will continue to be an issue for other states like Alaska that want to pursue primacy as well. **Is Carbon Capture and Storage (CCS) viable without Class VI wells for permanent storage?**

EPA Response: Geologic sequestration of carbon dioxide for permanent storage is an essential component of CCS. Where the Safe Drinking Water Act is applicable, Class VI injections wells are required to emplace CO2 for permanent geologic storage.

a. What steps is EPA taking to ensure that applications for Class VI well permits and primacy will not take multiple years?

EPA Response: EPA's goal is to make a permit determination within 24 months of notification to an applicant of an administratively complete application. The review timeline is influenced by project-specific factors, such as: the number of artificial penetrations within the proposed site area, the level of completeness of site-specific data, and applicant responsiveness. Approximately 80% of the Class VI permit applications under review at EPA were received in the last 12 months.

To improve Class VI permitting EPA has developed robust guidance, tools, and training for states and applicants, and has increased public engagement and outreach activities. EPA has also developed an interagency agreement with the Department of Energy (DOE) to further support the review of Class VI permit applications.

Regarding primacy, EPA supports early engagement from states, Tribes, and territories that are interested in receiving primacy for Class VI injection wells. Early engagement through the pre-application activities phase assists development of primacy package materials that are of the quality needed for EPA to make a decision. During the pre-application phase, EPA also conducts a comparison of State, Tribal, or Territory Class VI rules to the federal Class VI regulations. EPA does this to help ensure the rules are at least as stringent as the federal regulations and thus meet EPA's requirements for primacy. In December 2022, the Administrator sent a letter to the Governors and to Tribal leaders, outlining expectations for how states can in their primacy applications balance the use of geologic sequestration with mitigation of impacts to vulnerable communities. In January 2023, EPA announced the availability of $50M in grants for states and Tribal authorities interested in seeking primary enforcement authority for Class VI wells.

b. How long should an application for primacy take from submission to being published in the Federal Register for public comment?

EPA Response: EPA strives to make final determinations on primacy applications as expeditiously as possible after a state submits a complete application with a goal of within 12 months from determination of a complete

application. However, there are instances where the applicant needs to revise elements of the application, revise state statutory or regulatory provisions, or provide additional information to ensure the application is complete. All of these may impact the review period. Our regulations at 40 CFR 145.22(b)–(d) provide direction regarding the statutory review period associated with EPA's decision on an application to receive Section 1422 authority under the Safe Drinking Water Act. Our regulations at 40 CFR 145.32 identify the process for revising a Section 1422 program. When a state already has a Section 1422 UIC program, adding primacy for Class VI is considered a program revision.

c. Please briefly outline the EPA's expected oversight of Class VI UIC primacy operations concerning carbon sequestration.

EPA Response: Oversight of state UIC program performance occurs within a framework that governs state and EPA UIC program implementation. UIC program oversight helps ensure that states with primacy continue to implement their programs in a manner consistent with the SDWA and their memorandums of agreement (MOAs) with EPA. The oversight framework guides EPA in tracking and evaluating state implementation and performance and provides consistency in how state programs are evaluated. For Class VI programs, EPA uses a model MOA that includes provisions regarding oversight of Class VI programs. These include concurrence and consultation on aspects of Class VI permitting and notification regarding emergency response. The oversight framework provides EPA opportunities for continued input to improve state programs. In addition, once finalized, the Class VI Grant Program and its requirements will be a part of this framework.

2. During the hearing, you committed to working with me to eliminate "honey buckets" in Alaska. A tool that would make that goal easier to achieve is the Denali Commission. For years, this independent federal agency has been involved in water and sewer projects in rural villages, working with the Alaska Native Tribal Health Consortium. Currently, ANTHC must cobble together multiple streams of funding from the following sources, to fully fund these projects: Indian Health Service Sanitation Facilities Construction, USDA-Rural Development Rural Alaska Villages, EPA Alaska Native Villages, EPA Clean Drinking Water Act tribal set aside, EPA Safe Drinking Water Act tribal set aside, the State of Alaska, and the Denali Commission. Each of these funding sources comes with its own set of rules and regulations with which ANTHC must comply when building water and sewer systems. This complex, burdensome funding maze is a headache that dramatically increases costs. A way to stretch dollars is to transfer all EPA funds to the Denali Commission, and then have the Commission issue one grant to ANTHC, that has only one set of rules, regulations, and reporting requirements. Sec. 311 of the Denali Commission Act of 1998 provides in part, "any funds transferred to the Commission under this subsection shall…not be subject to any requirements that applied to the funds before the transfer, including a requirement in an appropriations Act or a requirement or regulation of the Federal agency from which the funds are transferred." This flexibility and the Commission's easier grant process, regulations, and reporting requirements would enable ANTHC to stretch federal resources, so more progress is made towards

eliminating the honey bucket. The President of ANTHC, Val Davidson, in a letter to Mitch Landrieu in January 2022, suggested the EPA transfer funds to the Commission to fund these projects. **Will you examine the Commission's transfer authority and consider using the Commission as a conduit to stretch federal resources, and ease the burden currently faced by ANTHC?**

EPA Response: EPA can examine the Denali Commission's transfer authority, particularly as it relates to the statutory and appropriations requirements that apply to our existing programs.

a. **Will you work with the funding partners at USDA Rural Development and encourage that agency to also consider using the Commission's transfer authority to further stretch federal resources and lower the regulatory burdens on ANTHC?**

   EPA Response: EPA can discuss this matter with our partners on the Federal Infrastructure Task Force (ITF) to Improve Access to Safe Drinking Water and Basic Sanitation to Tribal Communities. The federal partners include: Department of Agriculture, Environmental Protection Agency, Department of Health and Human Services – Indian Health Service and Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, Department of Housing and Urban Development, and Department of the Interior – Bureau of Reclamation and Indian Affairs. The ITF partners signed a revised Memorandum of Understanding (MOU) in February 2022 to better coordinate the federal government's efforts to provide infrastructure and promote sustainable practices for the provision of safe drinking water and basic sanitation in American Indian and Alaska Native Communities.

3. The Region 6 Outer Continental Shelf (OCS) General Permit GMG290000 (General Permit) covers discharges for all oil and gas operations, including all drilling activity, approximately 1600 platforms that produce nearly all the oil and natural gas from the U.S. Gulf of Mexico, and all decommissioning operations. It expired on September 30, 2022 and has been administratively continued by EPA.

   EPA has determined that during the administrative continuance period, applications for new discharges are not allowed. As a result, companies cannot obtain permits for new discharges that are needed to pursue new drilling opportunities, develop yet-to-be acquired leases such as those planned for auction during BOEM's upcoming Lease Sale 259, and unforeseen decommissioning and abandonment operations for wells, platforms and pipelines.

   There are examples of other general permits from EPA that allow for new applications during the administrative continuance. EPA's Vessel General Permit expired December 19, 2018. The Vessel Incidental Discharge Act (VIDA) (signed by the President on December 4, 2018) requires EPA to develop new national standards of performance for commercial vessel incidental discharges.

As a result of the VIDA, the 2013 VGP remains in force and effect beyond the current expiration date of December 19, 2018: until EPA and the USCG develop new regulations to replace the existing 2013 VGP. As such, any vessel operator requiring permit coverage for a vessel that is not currently covered under an existing, active NOI must submit an NOI or prepare a PARI form consistent with the 2013 VGP requirements.

Are you aware that your agency has allowed both Gulf of Mexico oil and gas NPDES (discharge) general permits to expire?

EPA Response: Please see answer to sub-question d., below.

a. Now that these permits are in an "administrative continuance", are you aware that Region 4 and Region 6 have made the interpretation that no new discharges may be granted during an administrative continuance?

EPA Response: Yes, EPA's long-standing interpretation of 40 CFR 122.6 and 40 CFR 122.28(b)(2) is that new discharges cannot obtain coverage under an administratively continued EPA general NPDES permit.

b. Can you explain why EPA is treating oil and gas differently than other industries?

EPA Response: EPA is not treating oil and gas differently than other industries. 40 CFR 122.6 and 40 CFR 122.28(b)(2), based on APA section 558(c), 5 U.S.C. § 558(c), are applied consistently to all NPDES general permits that are administratively continued, irrespective of the industry.

c. Does EPA plan to adopt a similar interpretation for the OCS Oil & Gas Extraction General Permits for Region 4 and Region 6 while the final permits are under administrative continuance?

EPA Response: 40 CFR 122.6 and 40 CFR 122.28(b)(2) apply to all EPA NPDES permits that are administratively continued, irrespective of the type of facility.

d. When does EPA plan to issue the new Region 6 General Permit?

EPA Response: The Region 6 GMG290000 Oil and Gas General Permit covers federal waters in the Western and most of the Central Gulf of Mexico off Louisiana and Texas. The existing permit expired September 30, 2022 and is now in the final stages of reissuance. EPA reached out to the offshore oil and gas industry to recommend obtaining coverage for new discharges prior to expiration of the permit.